



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 216 and 300**

**[Docket No. 090223227-5999-02]**

**RIN 0648-AX63**

**Trade Monitoring Procedures for Fishery Products; International Trade in Seafood;**

**Permit Requirements for Importers and Exporters**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to revise procedures and requirements for filing import, export, and re-export documentation for certain fishery products to meet requirements for the SAFE Port Act of 2006, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), other applicable statutes, and obligations that arise from U.S. participation in regional fishery management organizations (RFMOs) and other arrangements to which the United States is a member or contracting party. Specifically, NMFS proposes to integrate the collection of trade documentation within the government-wide International Trade Data System (ITDS) and require electronic information collection through the automated portal maintained by the Department of Homeland Security, Customs and Border Protection (CBP). Under this integration, NMFS would require annually renewable International Fisheries Trade Permits (IFTP) for the import, export, and re-export of certain regulated seafood commodities that are

subject to trade monitoring programs of RFMOs and/or subject to trade documentation requirements under domestic law. These trade monitoring programs enable the United States to exclude products that do not meet the criteria for admissibility to U.S. markets, including products resulting from illegal, unregulated, and unreported (IUU) fishing activities. This proposed rule would consolidate existing international trade permits for regulated seafood products under the Antarctic Marine Living Resources (AMLR) and Highly Migratory Species International Trade Permit (HMS ITP) programs and expand the scope of the permit requirement to include regulated seafood products under the Tuna Tracking and Verification Program (TTVP). This proposed rule would also stipulate data and trade documentation for the above programs which must be provided electronically to CBP and address recordkeeping requirements for these programs in light of the proposed changes. Trade documentation excludes any programmatic documents that are not required at the time of entry/export (e.g., biweekly dealer reports).

**DATES:** Written comments must be received by *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by docket NOAA-NMFS-2009-0124, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2009-0124](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2009-0124), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Mail: Mark Wildman, International Fisheries Division, Office for International Affairs and Seafood Inspection, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office for International Affairs and Seafood Inspection (see **FOR FURTHER INFORMATION CONTACT**) or by e-mail to the Office of Information and Regulatory Affairs at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Mark Wildman, International Trade and Marine Stewardship Division, Office for International Affairs and Seafood Inspection, NOAA Fisheries (phone 301-427-8386, or e-mail [mark.wildman@noaa.gov](mailto:mark.wildman@noaa.gov)).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Security and Accountability For Every Port Act of 2006 (SAFE Port Act, Public Law 109-347) requires all Federal agencies with a role in import admissibility decisions to collect information electronically through the ITDS. The Department of the Treasury has the U.S. Government lead on ITDS development and Federal agency integration. CBP developed Automated Commercial Environment (ACE) as an internet-based system for the collection and dissemination of information for ITDS. The Office of Management and Budget (OMB), through

its e-government initiative, oversees Federal agency participation in ITDS, with a focus on reducing duplicate reporting across agencies and migrating paper-based reporting systems to electronic information collection.

The term ITDS refers to the integrated, government-wide project for the electronic collection, use, and dissemination of the international trade and transportation data Federal agencies need to perform their missions, while the term ACE refers to the “single window” system through which the trade community will submit data related to imports and exports . Detailed information on ITDS is available at: <http://www.itds.gov>.

Numerous Federal agencies are involved in the regulation of international trade and many of these agencies participate in the import, export and transportation-related decision-making process. Agencies also use trade data to monitor and report on trade activity. NMFS is a partner government agency in the ITDS project because of its role in monitoring the trade of certain fishery products. Electronic collection of seafood trade data through a single portal will result in an overall reduction of the public reporting burden and the agency’s data collection costs, will improve the timeliness and accuracy of admissibility decisions, and increase the effectiveness of applicable trade restrictive measures.

#### *Overview of Current Trade Measures and Trade Monitoring Programs*

NMFS is responsible for implementation of trade measures and monitoring programs for fishery products subject to RFMO documentation requirements and/or documentation requirements under domestic laws. RFMOs are international fisheries organizations, established by treaties, to promote international cooperation to achieve effective and responsible marine stewardship and ensure sustainable fisheries management. The United States is a signatory to many RFMO treaties, and Congress has passed implementing legislation to carry out U.S.

obligations under those treaties. Trade measures and monitoring programs enable the United States to exclude products that do not meet the criteria for admissibility to U.S. markets.

NMFS notes that the MSA defines “import” to mean “land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing or introduction constitutes an importation within the meaning of the customs laws of the United States; but...does not include any activity described [above] with respect to fish caught in the exclusive economic zone or by a vessel of the United States.” 16 U.S.C. 1802(22). This definition of “import” covers a broad range of activities, including but not limited to, customs entry for consumption, withdrawal from warehouse for consumption, or entry for consumption from a foreign trade zone. The following sections outline NMFS authorities for the various trade measures and trade monitoring programs that apply to fishery products.

#### *Authorities for Trade Measures*

The High Seas Driftnet Fishing Moratorium Protection Act (HSDFMPA) (16 U.S.C. 1826d-k) requires U.S. actions to address IUU fishing activity, bycatch of protected living marine resources (PLMR) and shark catch. Specifically, the HSDFMPA requires the Secretary of Commerce (Secretary) to identify in a biennial report to Congress foreign nations whose vessels engaged in IUU fishing or fishing practices that result in PLMR bycatch or shark catch on the high seas without a regulatory program comparable to that of the United States. The Secretary has established procedures to certify whether nations identified in the biennial report are taking appropriate corrective actions to address the activities for which they were identified (50 CFR 300, Subpart N). Certain fish and fish products from identified nations that do not receive

positive certifications could be subject to import prohibitions under the authority provided in the High Seas Driftnet Fisheries Enforcement Act (HSDFEA) (16 U.S.C. 1826a-c).

Additionally, there are identification and/or certification procedures in other statutes, including the Pelly Amendment to the Fishermen's Protective Act (22 U.S.C. 1978) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). These procedures may result in trade restrictive measures for a country for those fishery products associated with the activity that raised concerns. Further, import prohibitions for certain fishery products could also be applied under provisions of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) and other statutes, depending on the circumstances of the fish harvest and the conservation concerns of the United States. Trade monitoring authority is also provided by the Dolphin Protection Consumer Information Act (DPCIA) (16 U.S.C. 1385) which specifies the conditions under which tuna products, eligible to be labeled dolphin-safe, may be imported into the United States.

Multilateral efforts to combat IUU fishing may also result in requirements to take trade action. The United States is a member or contracting party to several RFMOs. Many of these RFMOs have established procedures to identify nations and/or vessels whose fishing activities undermine the effectiveness of the conservation and management measures adopted by the organization. Fishery products exported by such nations or harvested by such vessels may be subject to import or sale prohibitions specified by the RFMO as a means to address the activity of concern. In these cases, the United States is obligated to deny entry of the designated products into its markets, unless it has lodged a timely objection to the RFMO measure establishing the import or sale prohibition. Relevant RFMO statutes include the ATCA, the Antarctic Marine Living Resources Convention Act (AMLRCA) (16 U.S.C. 2431 *et seq.*), the Western and Central

Pacific Fisheries Convention Implementation Act (WCPFCIA) (16 U.S.C. 6901 *et seq.*), and the Tuna Conventions Act (TCA) (16 U.S.C. 951 *et seq.*).

Although the proposed rule would not amend existing regulations pertaining to any of the above trade measure authorities, import filing through ACE will facilitate U.S. Government implementation of trade measures when and if imposed. ITDS will facilitate sharing of data between agencies and allow for improved targeting of suspected illegal (or embargoed) shipments.

#### *Trade Monitoring and Documentation Programs*

Pursuant to domestic statutory authorities and/or multilateral agreements, NMFS has implemented a number of monitoring programs to collect information from the seafood industry regarding the origin of certain fishery products. The purpose of these programs is to determine the admissibility of the products in accordance with the specific criteria of the trade measure or documentation requirements in effect. The three NMFS trade monitoring programs subject to this proposed rule are the HMS ITP program which regulates trade in specified commodities of tuna, swordfish, billfish, and shark fins; the AMLR trade program which regulates trade in Antarctic and Patagonian toothfish and other fishery products caught in the area where the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) applies; and the TTVP, which regulates trade in frozen and/or processed tuna products, as well as certain other fishery products under the authority of the HSDFEA (refer to 50 CFR 216.24(f)(2)(iii) for a complete list). Generally, these trade monitoring programs require anyone who intends to import, export, and/or re-export regulated species to: obtain a permit from NMFS; obtain documentation on the flag-nation authorization for the harvest from the foreign exporter; and submit this information to NMFS. Depending on the commodity, specific information may also be required,

for example the flag state of the harvesting vessel, the ocean area of catch, the fishing gear used, the harvesting vessel name, and details and authorizations related to harvest, landing, transshipment and export.

In most cases, these trade monitoring programs require the importer to submit documentation that provides catch and/or other statistical information to NMFS, while other relevant information on the inbound shipments is provided by the dealer, importer, shipper, carrier, or customs broker to CBP by electronic means. NMFS reviews and reconciles the information reported by importers with the information obtained from CBP and, where applicable, from the relevant RFMO or harvesting or exporting/re-exporting nation to determine if the admissibility requirements have been satisfied. If documentation is incomplete, fraudulent or missing, or if the shipment is not admissible given its ocean area of harvest, flag country of the harvesting vessel, harvesting vessel or the circumstances under which it was harvested, entry into U.S. commerce may be prohibited for that shipment and the shipment may be subject to forfeiture. In addition, the importer or other responsible party may be subject to enforcement action. Likewise, U.S. exporters must provide similar documentation for use by other importing nations.

As an ITDS partner government agency, access to the ACE system and ITDS data has improved NMFS' ability to evaluate trends and identify potential problems with seafood imports, including potential cases of seafood fraud (e.g., tariff code misspecification) or imports lacking proper documentation. ACE has helped NMFS communicate with the seafood industry to educate importers and brokers on documentation requirements. It has also helped NMFS target enforcement resources using a risk management approach and has improved the Agency's ability to intercept illegal shipments by providing access to real time information on shipments coming



into U.S. ports of entry. NMFS anticipates that efficiencies derived from ITDS integration would better enable the agency to implement potential future trade measures taken by RFMOs or under domestic statutes, as well as enhance the implementation of NMFS' three current trade monitoring and documentation programs (AMLR, HMS ITP, and TTVP). NMFS believes implementation of ITDS would result in reduced reporting burdens for the seafood industry, reduced data processing time for government, increased compliance with product admissibility requirements, faster admissibility decisions and more effective enforcement.

Under the proposed rule (50 CFR 300.320), an IFTP would be established which would consolidate existing international trade permits for regulated seafood products under the AMLR and HMS ITP programs and expand the scope of the permit requirement to include regulated seafood products under the TTVP. To obtain the IFTP, U.S. importers, exporters, and re-exporters of seafood products covered under the TTVP, AMLR, and HMS ITP programs would be required to electronically submit their application and fee for the IFTP via a website designated by NMFS. As explained above, currently, the TTVP, AMLR and HMS ITP regulations require submission of specific information and documentation for trade monitoring. Under this proposed rule, the IFTP holder, or his or her representative, would need to electronically provide CBP via ACE with certain data sets (i.e., a subset of the information required to be submitted under the TTVP, AMLR or HMS ITP) and scanned images of documentation for each applicable trade transaction. NMFS would provide detailed information regarding submission of such data sets and documentation in a compliance guide for industry that will be prepared in advance of NMFS' implementation of a final rule. The format for the data sets would be designated for each of the three programs and specified in the following

documents that would be jointly developed by NMFS and CBP and made available to entry filers by CBP (<http://www.cbp.gov/trade/ace/catair>):

- CBP and Trade Automated Interface Requirements – Appendix PGA
- CBP and Trade Automated Interface Requirements – PGA Message Set
- Automated Broker Interface (ABI) Requirements – Implementation Guide for NMFS

While this proposed rule only applies to the three programs described above, proposed § 300.320 provides that the IFTP and ACE requirements may be incorporated by reference in other regulations pertaining to documentation and reporting of imports and/or exports.

Because NMFS will have access to the ITDS, importers, exporters, re-exporters and/or their customs agents would no longer be required to provide NMFS with paper copies of trade documentation. However, they would still need to maintain, and make available for inspection, electronic or paper versions of said records at their place of business for a period of two years after the transaction. Biweekly dealer reports, or other documents not required for import/export admissibility decisions, will not be affected by this proposed rule and will continue to be submitted to NMFS as paper copies. Currently, a trade permit is not required for trade of TTVP fishery commodities. Under this proposed rule, however, those who trade in TTVP fishery commodities would need to obtain an IFTP and individuals or business entities trading in fishery commodities covered by the current HMS ITP and AMLR trade programs would need to obtain an IFTP rather than the program-specific permits required currently. The IFTP would authorize import, export and re-export of fishery commodities covered by the TTVP, AMLR or HMS ITP programs, provided that the permit holder complies with the specific requirements of each program. The amount of the fee charged for the IFTP would be calculated, at least annually, in accordance with procedures of the NOAA Finance Handbook

(<http://www.corporateservices.noaa.gov/finance/Finance%20Handbook.html>) for determining the costs for administering the IFTP program; the fee would not exceed such costs.

### *Alternatives Considered*

When deliberating how best to implement ITDS, NMFS also considered several alternatives to the proposed action described above. Under the first alternative, rather than require entry filers to submit scanned images of documentation and a limited data set, such filers would be required to enter all data elements necessary for the authentication and authorization of each shipment into the CBP's automated ACE system. Although this alternative would not require the submission of scanned images of documentation for two of the three trade monitoring programs (scanned images would still be required for the TTVP), it would require entry filers to provide most of the data contained in such documentation at the time of import or export rather than providing a data set limited to only those elements absolutely necessary to determine admissibility. NMFS considers this alternative to be too burdensome for entry filers in terms of the additional time that would be required to enter such data into ACE.

A second alternative would involve the submission of a limited electronic data set with no scanned documentation provided electronically. In this scenario, NMFS would require entry filers to submit a limited message set into ACE, but entry filers would also need to separately provide NMFS with any additional documentation and data necessary for NMFS to complete dolphin-safe tuna verification at the time of, or in advance of, importation and periodic reports for RFMOs. This alternative is not preferred as it would create an unnecessary burden on both NMFS and the trade since it would require entry filers to both complete ACE entry procedures and also submit admissibility documents to NMFS outside of ACE, the ITDS single window.

A third alternative would be for NMFS to require an electronic data set consisting solely of the international fisheries trade permit number with scanned documentation provided electronically via ITDS. This alternative would not be preferred as it would place a significant burden on NMFS to manually convert scanned document images to data sets so that NMFS could make decisions regarding product admissibility. Such an approach would require considerable NMFS staff time and would inevitably create burdens on industry as such an alternative would result in post-release seizures or re-delivery orders to the trade for products later determined by NMFS to be inadmissible.

A fourth alternative would be to implement the IFTP requirement for the HMS ITP and AMLR trade program but not for the TTVP which currently has no permit requirement. The rationale for instituting the IFTP for the TTVP is to identify the business entities that are engaged in the trade activities subject to monitoring, for the purposes of informing them of requirements and any changes thereto. Lack of education/notification could increase noncompliance, resulting in delayed release, seizures or other enforcement actions, and/or blocked shipments when requirements are not met at the border. In addition, not requiring an IFTP for the TTVP participants, would preclude the imposition of permit sanctions in the event of serious infractions of reporting or recordkeeping requirements in the TTVP. For all the above-stated reasons, this alternative is not preferred.

#### *Amendments to AMLR Regulations*

As a Member of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the United States is obligated to implement conservation measures adopted by CCAMLR, unless the United States objects, pursuant to Article IX of the CCAMLR Convention. NMFS has implemented CCAMLR-adopted conservation measures in 50 CFR part

300, subpart G. Under these regulations, a person that intends to import or re-export AMLR must obtain a dealer permit. To integrate the collection of information on the trade of AMLR within the ITDS, NMFS proposes to revise the AMLR regulations to require a dealer importing or exporting AMLR to possess a valid IFTP issued under the proposed §300.322 discussed below. These proposed revisions to 50 CFR part 300 subpart G would replace the AMLR dealer permit procedures with a reference to the proposed IFTP procedures (see below). Where appropriate, the term “AMLR dealer permit” and references to that permit would be replaced with “IFTP.” Section 300.114(k) of the AMLR regulations regarding registered agents would be removed because § 300.322 provides for the designation of resident agents who would be authorized to act on behalf of foreign entities.

#### *Amendments to HMS ITP Regulations*

NMFS established permitting, reporting, and recordkeeping regulations to implement various RFMO trade monitoring programs under the HMS ITP program in 50 CFR part 300 subpart M. As noted above, a person trading in fishery commodities covered by the current HMS ITP program would need to obtain the newly established IFTP and the program-specific HMS ITP permit will be retired. Submission of consignment documents such as the International Commission for the Conservation of Atlantic Tuna (ICCAT) bluefin tuna catch document would be through ACE and the CBP Document Imaging System (DIS). Using the ACE system rather than submitting hardcopy documents to NMFS would result in reduced reporting burdens for the seafood industry and reduced data processing time for the government as documents would be submitted only once, to CBP, instead of to both CBP and NMFS.

#### *Amendments to TTVP*

As noted above, a person trading in fishery commodities covered under the TTVP would need to obtain an IFTP. Such a trade permit is currently not a requirement under the TTVP. NMFS believes the benefits and efficiencies resulting from ITDS implementation and establishing a single consolidated IFTP covering all three of the NMFS trade monitoring programs would greatly exceed the fee charged to cover administrative costs associated with NMFS issuance of the IFTP.

In addition, under current regulations at 50 CFR 216.24(f)(3)(ii), TTVP importers are able to submit documents electronically in Portable Document Format (PDF) using a secure file transfer protocol site. This proposed rule would eliminate that document submission option in favor of document submission through the ACE system. Such a change would result in reduced reporting burdens for the seafood industry and reduced data processing time for the government as documents would be submitted only once, to CBP, instead of to both CBP and the TTVP. The proposed rule would also allow for a reduced data set to be filed via ACE in certain circumstances. The reduced data set is limited to importations by domestic canners and to processors other than canners that label any tuna product dolphin-safe, and which are required to submit the monthly reports required under 50 CFR 216.93(d)(2) or (e) to the TTVP. The reduced data set pertains to importations of: 1) frozen cooked tuna loins used in cannery operations and 2) tuna products in airtight containers manufactured in American Samoa and imported into the United States or Puerto Rico that originated from the tuna receipts listed on those monthly reports. The reduced data set is intended to prevent duplicative reporting for the companies that import the tuna products described above and that already submit required information to the TTVP via the monthly reports.

This proposed rule also makes minor edits to the regulatory text in order to update an internet web site address, harmonize regulatory text in part 216, Subpart H, Dolphin Safe Tuna Labeling, with the regulatory text being revised as part of ITDS implementation in 50 CFR 216.24(f), and allow importers to submit documentation to the ACE system at the time of, or in advance of, importation. Revisions to the tables in § 216.24(f)(2)(i) through (iii) have been made to reflect the latest updates to harmonized tariff codes.

*Relationship to Presidential Task Force on Combatting Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud*

This current rulemaking does not propose measures to implement recommendations 14 and 15 (seafood traceability) of the Presidential Task Force on Combatting Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud (Task Force). There will be a separate opportunity for public comment on the proposed regulations pertaining to these Task Force recommendations.

**Classification**

This proposed rule is published under the authority of AMLRCA of 1984, 16 U.S.C. 2431 *et seq.*; ATCA of 1975, 16 U.S.C. 971 *et seq.*; TCA of 1950, 16 U.S.C. 951-961; MSA, 16 U.S.C. 1801 *et seq.*; MMPA of 1972, 16 U.S.C. 1361-1407; DPCIA, 16 U.S.C. 1385; HSDFMPA, 16 U.S.C. 1826d-k; and HSDFEA, 16 U.S.C. 1826a-c. Other relevant authorities include the Pelly Amendment to the Fishermen's Protective Act, 22 U.S.C. 1978, and the Lacey Act, 16 U.S.C. 3371.

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of these and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. NMFS has prepared a regulatory impact review of this action, which is available from NMFS (see **ADDRESSES**). This analysis describes the economic impact this proposed action, if adopted, would have on the United States. NMFS invites the public to comment on this proposal and the supporting analysis.

#### *Regulatory Flexibility Act*

An initial regulatory flexibility analysis was not prepared because this proposed rule is not expected to have a significant economic impact on U.S. small entities. Thus, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have any significant economic impact on a substantial number of small entities.

The regulatory action being considered, and its legal basis, is described in detail earlier in the preamble. Although a new IFTP is proposed to be established for the import, export or re-export of regulated products under the AMLR, HMS ITP and TTVP programs, this new permit generally represents a consolidation of information contained in existing permits and should actually result in fewer reporting or recordkeeping requirements. Data sets to be entered electronically to determine product admissibility are already required to be submitted in paper form under the respective trade programs. Thus, NMFS anticipates that U.S. entities would not be significantly affected by this action because it generally does not pose new or additional burdens with regard to the collection and submission of information necessary to determine product admissibility.

With regard to the possible economic effects of this action, per the response to Question 13 of the supporting statement prepared for the Paperwork Reduction Act analysis (available



from [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain)), NMFS estimates there will be 751 applicants for the new IFTP with an estimated net increase in annual costs of \$16,255 for obtaining those permits, based on the combined number of permit holders and respondents under NMFS' existing trade monitoring programs. Although NMFS does not have access to data about the business sizes of importers and receivers that would be impacted by this proposed rule, it is likely that the majority may be classified as small entities. However, when overall total new burdens for the three requirements proposed under this rule (IFTTP, data set submission, and admissibility document(s) submission) are compared to current burdens, the new consolidated burdens are estimated to result in an overall net burden *decrease* of 4,225 hours and \$63,650. A no-action alternative, where NMFS would not promulgate the proposed rule, was not considered as all applicable U.S. government agencies are required to implement ITDS under the authority of section 405 of the SAFE Port Act and Executive Order 13659 on Streamlining the Export/Import Process, dated February 19, 2014.

The proposed action would not affect the volume of seafood trade or alter trade flows in the U.S. market. Although the proposed rule would require traders under the TTVP to obtain an IFTP, which they are not currently required to do, NMFS expects that the consolidated IFTP would have no impact on, or would actually reduce, the overall administrative burden on the public; those parties currently required to obtain two separate permits under the AMLR and HMS ITP programs would be required to obtain only one consolidated permit under this proposed rule.

The consolidated permitting and electronic reporting program proposed by this rulemaking would not have significant adverse or long-term economic impacts on small U.S. entities. This proposed rule has also been determined not to duplicate, overlap, or conflict with

any other Federal rules. Thus, the requirements and prohibitions in the proposed rule would not have a significant economic impact on a substantial number of small entities. Consequently, an initial regulatory flexibility analysis is not required and none has been prepared.

#### *Paperwork Reduction Act*

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. When overall total new burdens for the three requirements proposed under this rule (IFTP, data set submission, and admissibility document(s) submission) are compared to current burdens, the new burdens are estimated to result in an overall net burden decrease of 4,225 hours and \$63,650.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Office for International Affairs and Seafood Inspection at the **FOR FURTHER INFORMATION CONTACT** above, or to the Office of Information and Regulatory Affairs by e-mail to *OIRA\_Submission@omb.eop.gov* or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

## **List of Subjects**

### **50 CFR Part 216**

Administrative practice and procedure, Exports, Marine mammals, Reporting and recordkeeping requirements.

### **50 CFR Part 300**

Exports, Fisheries, Fishing, Fishing vessels, Foreign relations, Illegal, unreported or unregulated fishing, Imports, International trade permits, Treaties.

Dated: December 23, 2015.

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Eileen Sobeck,

Assistant Administrator for Fisheries.

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 216 and 300 are proposed to be amended as follows:

### **PART 216--REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.24, revise introductory paragraph (f)(2); (f)(2)(i)(A) and (D); (f)(2)(ii)(A) and (D); (f)(2)(iii)(A) through (C); introductory paragraph (f)(3); and (f)(3)(i) through (iii) to read as follows:

**§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.**

\*\*\*\*\*

(f) \*\*\*

(2) *Imports requiring a Fisheries Certificate of Origin and an International Fisheries Trade Permit.* Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i) through (iii) of this section may not be imported into the United States unless: a scanned copy of a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, associated certifications and statements described in § 216.91(a), and required data set are filed electronically with U.S. Customs and Border Protection (CBP) at the time of, or in advance of, importation as required under § 300.322; and the importer of record designated on the entry summary (Customs Form 7501) holds a valid International Fisheries Trade Permit as specified at § 300.322 of this title. “Required data set” has the same meaning as § 300.321 of this title (*see* definition of “Documentation and data sets required”).

(i) \*\*\*

(A) *Frozen:* (products containing Yellowfin).

0303.42.0020 Yellowfin tunas, whole, frozen

0303.42.0040 Yellowfin tunas, head-on, frozen, except whole

0303.42.0060 Yellowfin tunas, other, frozen, except whole, head-on, fillets, livers and roes

0304.87.0000 Tuna fish fillets, frozen, not elsewhere specified or indicated (NESOI)

0304.99.1190 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each

\*\*\*\*\*

(D) *Other*: (products containing Yellowfin).

0511.91.0090 Fish, shellfish products unfit for human consumption

1604.20.1000 Fish pastes

1604.20.1500 Fish balls, cakes and puddings, in oil

1604.20.2000 Fish balls, cakes and puddings, not in oil, less than 6.8 kg, in airtight containers

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each

1604.20.3000 Fish balls, cakes and puddings, NESOI

1604.20.4000 Fish sticks, not cooked, nor in oil

1604.20.5010 Fish sticks, cooked and frozen

1604.20.5090 Fish sticks, NESOI

2309.10.0010 Dog or cat food, in airtight containers

(ii) \*\*\*

(A) *Frozen*: (other than Yellowfin).

0303.41.0000 Albacore or longfinned tunas, frozen, except fillets, livers and roes

0303.43.0000 Skipjack tunas or stripe-bellied bonito, frozen, except fillets, livers and roes

0303.44.0000 Bigeye tunas, frozen, except fillets, livers and roes

0303.45.0110 Atlantic Bluefin, frozen, except fillets, livers and roes

0303.45.0150 Pacific Bluefin, frozen, except fillets, livers and roes

0303.46.0000 Southern bluefin tunas, frozen, except fillets, livers and roes

0303.49.0200 Tunas, frozen, except fillets, livers and roes, NESOI

0304.87.0000 Tuna fish fillets, frozen, NESOI

0304.99.1190 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI

\*\*\*\*\*

(D) *Other*: (only if the product contains tuna).

0511.91.0090 Fish, shellfish products unfit for human consumption

1604.20.1000 Fish pastes

1604.20.1500 Fish balls, cakes and puddings, in oil

1604.20.2000 Fish balls, cakes and puddings, not in oil, less than 6.8 kg, in airtight containers

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each

1604.20.3000 Fish balls, cakes and puddings, NESOI

1604.20.4000 Fish sticks, not cooked, nor in oil

1604.20.5010 Fish sticks, cooked and frozen

1604.20.5090 Fish sticks, NESOI

2309.10.0010 Dog or cat food, in airtight containers

(iii) \*\*\*

(A) *Frozen*:

0303.11.0000 Sockeye (red) salmon (*Oncorhynchus nerka*), frozen, except fillets, livers and roes

0303.12.0012 Chinook (King) salmon (*Oncorhynchus tshawytscha*), frozen, except fillets, livers and roes

0303.12.0022 Chum (dog) salmon (*Oncorhynchus keta*), frozen, except fillets, livers and roes

0303.12.0032 Pink (humpie) salmon (*Oncorhynchus gorbuscha*), frozen, except fillets, livers and roes

0303.12.0052 Coho (silver) salmon (*Oncorhynchus kisutch*), frozen, except fillets, livers and roes

0303.12.0062 Pacific salmon (*Oncorhynchus masou*, *Oncorhynchus rhodurus*), frozen, except fillets, livers and roes, NESOI

0303.13.0000 Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), frozen, except fillets, livers and roes

0303.14.0000 Trout (*Salmo trutta*; *Oncorhynchus mykiss*, *clarki*, *aguabonita*, *gilae*, *apache*, and *chrysogaster*), frozen, except fillets, livers and roes

0303.19.0100 Salmonidae, frozen, except fillets, livers and roes, NESOI

0303.57.0010 Swordfish steaks, frozen, except fillets

0303.57.0090 Swordfish, frozen, except steaks, fillets, livers and roes

0303.81.0010 Dogfish (*Squalus* spp.), frozen, except fillets, livers and roes

0303.81.0090 Sharks, frozen, except dogfish, fillets, livers and roes

0303.89.0079 Fish, other, frozen, except fillets, livers and roes, NESOI

0304.81.5010 Atlantic Salmonidae (*Salmo salar*) fillets, frozen, NESOI

0304.81.5090 Salmonidae fillets, frozen, except Atlantic salmon, NESOI

0304.89.1090 Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NESOI

0304.91.1000 Swordfish, frozen, in bulk or in immediate containers weighing over 6.8 kg each

0304.91.9000 Swordfish, frozen, NESOI

0304.99.9191 Fish fillets, ocean, frozen, NESOI

0307.49.0010 Squid fillets, frozen

0307.49.0022 Squid, *Loligo opalescens*, NESOI

0307.49.0024 Squid, *Loligo pealei*, NESOI

0307.49.0029 Squid, *Loligo*, other, NESOI

0307.49.0050 Squid, other, NESOI

(B) *Canned:*

1604.11.2020 Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.2030 Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.2090 Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.4010 Chum (dog) salmon, not in oil, canned

1604.11.4020 Pink (humpie) salmon, not in oil, canned

1604.11.4030 Sockeye (red) salmon, not in oil, canned

1604.11.4040 Salmon, NESOI, not in oil, canned

1604.11.4050 Salmon, whole or in pieces, but not minced, NESOI

1604.19.2100 Fish, NESOI, not in oil, in airtight containers

1604.19.3100 Fish, NESOI, in oil, in airtight containers

1605.54.6020 Squid, *Loligo*, prepared or preserved

1605.54.6030 Squid, except *Loligo*, prepared or preserved

(C) *Other:*

0305.39.6080 Fish fillets, dried, salted or in brine, but not smoked, NESOI



0305.41.0000 Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*), including fillets, smoked

0305.49.4041 Fish including fillets, smoked, NESOI

0305.59.0000 Fish, dried, whether or not salted but not smoked, NESOI

0305.69.4000 Salmon, salted but not dried or smoked; in brine

0305.69.5001 Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked; in brine, NESOI

0305.69.6001 Fish, salted but not dried or smoked; in brine, NESOI

0305.71.0000 Shark fins, dried, whether or not salted but not smoked

0305.49.0010 Squid, frozen, fillets

0307.49.0022 Squid, *Loligo opalescens*, frozen (except fillets), dried, salted or in brine

0307.49.0024 Squid, *Loligo pealei*, frozen (except fillets), dried, salted or in brine

0307.49.0029 Squid, *Loligo*, frozen (except fillets), dried, salted or in brine, NESOI

0307.49.0050 Squid, other, frozen (except fillets), dried, salted or in brine, except *Loligo* squid

0307.49.0060 Cuttle fish (*Sepia officinalis*, *Rossia macrosoma*, *Sepiola* spp.), frozen, dried, salted or in brine

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, West Coast Region, or downloaded from the Internet at <http://www.nmfs.noaa.gov/pr/dolphinsafe/noaa370.htm>.

(i) A properly completed FCO, and its attached certifications and statements as described in § 216.91(a), must accompany the required CBP entry documents that are filed at the time of, or in advance of, importation.

(ii) FCOs and associated certifications and statements as described in § 216.91(a) must be provided electronically to CBP as indicated in paragraph (f)(2) of this section.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, West Coast Region, by the last endorser when all required endorsements are completed. Such FCOs must be submitted as specified in § 216.93(d)(2).

\*\*\*\*\*

3. In § 216.93, revise paragraphs (f) and (g)(2) to read as follows:

**§ 216.93 Tracking and verification program.**

\* \* \* \* \*

(f) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in § 216.24(f)(3) by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications and statements must be submitted by the importer of record to U.S. Customs and Border Protection as described in and required by § 216.24(f)(2).

(g) \* \* \*

(2) *Record submission.* At the time of, or in advance of, importation of a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must submit all corresponding FCOs and required certifications and statements for those tuna or tuna products as required by § 216.24(f)(2).

\* \* \* \* \*

**Part 300—INTERNATIONAL FISHERIES REGULATIONS**

4. The authority citation for 50 CFR part 300 continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 5501 *et seq.*; 16 U.S.C. 2431 *et seq.*; 31 U.S.C. 9701 *et seq.*

5. In §300.4:

- a. Revise paragraph (o);
- b. Redesignate paragraphs (p) and (q) as (q) and (r); and
- c. Add a new paragraph (p).

The revision and addition read as follows:

**§ 300.4 General prohibitions.**

\* \* \* \* \*

(o) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish imported, exported or re-exported in violation of this part.

(p) Import, export, or re-export any fish regulated under this part without a valid International Fisheries Trade Permit or applicable shipment documentation.

\* \* \* \* \*

6. In § 300.107, revise paragraph (b) introductory text, and paragraphs (b)(1), (b)(3), (c)(6)(i)(A)(5), and (c)(7)(i)(A)(4) to read as follows:

**§ 300.107 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(b) *Dealers.* Dealers of AMLR required under § 300.114 to have an International Fisheries Trade Permit (IFTP) issued under § 300.322 must:

- (1) Accurately maintain all reports and records required by their IFTP and this subpart;

\* \* \* \* \*

- (3) Within the time specified in the IFTP requirements, submit a copy of such reports and

records to NMFS at an address designated by NMFS.

(c) \*\*\*

(6) \*\*\*

(i) \*\*\*

(A) \*\*\*

(5) The dealer/exporter's name, address, and IFTP number; and

\* \* \* \* \*

(7) \*\*\*

(i) \*\*\*

(A) \*\*\*

(4) The dealer/exporter's name, address, and IFTP permit number;

\* \* \* \* \*

7. In § 300.114:

a. Revise paragraphs (a)(1), (a)(2), (a)(4), (b), (d), (e), (f), (g)(1), (g)(2), (h), and (j);

and

b. Remove paragraph (k).

The revisions read as follows:

**§ 300.114 Dealer permits and preapproval.**

(a) \*\*\*

(1) A dealer importing, or re-exporting AMLR, or a person exporting AMLR, must possess a valid IFTP issued under §300.322 and file required data sets electronically with CBP at the time of, or in advance of importation or exportation. "Required data set: has the same meaning as §300.321 (*see* definition of "Documentation and data sets required. See §300.322

for IFTP application procedures and permit regulations. The IFTP holder may only conduct those specific activities stipulated by the IFTP. Preapproval from NMFS is required for each shipment of frozen *Dissostichus* species.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit or its importation has been authorized by an IFTP and, in the case of frozen *Dissostichus* species, preapproval issued under §300.114(a)(1). AMLRs may not be released for entry into the United States unless accompanied by the harvesting permit, the individual permit, or IFTP and, in the case of frozen *Dissostichus* species, the preapproval certification granted by NMFS to allow import. NMFS will only accept electronic catch documents for toothfish imports.

\*\*\*\*\*

(4) An IFTP or preapproval issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) *Application.* Application forms for preapproval are available from NMFS. With the exception of the U.S. Customs 7501 entry number, a complete and accurate application must be received by NMFS for each preapproval at least 15 working days before the anticipated date of the first receipt, importation, or re-export. Dealers must supply the U.S. Customs 7501 entry number at least three working days prior to a *Dissostichus* species shipment's arrival.

\*\*\*\*\*

(d) *Issuance.* NMFS may issue a preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any CCAMLR conservation measure in force with respect to the United States or in violation of any regulation in this subpart. No preapproval will be issued

for *Dissostichus* species without verifiable documentation, to include VMS reports with vessel location and messages, of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species, except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

(e) *Duration*. A preapproval is valid until the product is imported. Each export or re-export document created by NOAA in the CDS is valid only for that particular shipment.

(f) *Transfer*. A preapproval issued under this section is not transferable or assignable.

(g) \* \* \* (1) *Pending applications*. Applicants for preapproval under this section must report in writing to NMFS any change in the information submitted in preapproval applications. The processing period for the application may be extended as necessary to review and consider the change.

(2) *Issued preapprovals*. Any entity issued a preapproval under this section must report in writing to NMFS any changes in previously submitted information. Any changes that would result in a change in the receipt or importation authorized by the preapproval, such as harvesting vessel or country of origin, type and quantity of the resource to be received or imported, and Convention statistical subarea from which the resource was harvested, must be proposed in writing to NMFS and may not be undertaken unless authorized by NMFS through issuance of a revised or new preapproval.

(h) *Revision, suspension, or revocation*. A preapproval issued under this section may be revised, suspended, or revoked, based upon a violation of the IFTP, the Act, or this subpart. Failure to report a change in the information contained in a preapproval application voids the application or preapproval. Title 15 CFR part 904 governs sanctions under this subpart.

\*\*\*\*\*

(j) *SVDCD*. Preapprovals will not be issued for *Dissostichus* spp. offered for sale or other disposition under a Specially Validated DCD.

\*\*\*\*\*

8. In § 300.117, revise paragraphs (b) and (r), and add paragraph (ii) to read as follows:

**§ 300.117 Prohibitions.**

\* \* \* \* \*

(b) Import into, or export or re-export from, the United States any AMLRs without applicable catch documentation as required by § 300.107(c), without an IFTP as required by § 300.114 (a)(1), or in violation of the terms and conditions for such import, export or re-export as specified on the IFTP.

\* \* \* \* \*

(r) Without a valid first receiver permit issued under this subpart, receive AMLRs from a vessel or receive AMLRs from a vessel without a valid harvesting permit issued under this subpart.

\* \* \* \* \*

(ii) Import into, or export or re-export from, the United States any AMLRs harvest by a vessel of the United States without a valid harvesting permit issued under this subpart.

\* \* \* \* \*

9. In § 300.181:

a. Add a definition for “Automated Commercial Environment (ACE)” in alphabetical order;

b. Revise the definition for “CBP”;

c. Add a definition for “International Fisheries Trade Permit (IFTP) or trade permit” in alphabetical order;

d. Revise the definition for “Permit holder”; and

e. Add a definition for “Required data set”, in alphabetical order.

The additions and revisions read as follows:

**§ 300.181 Definitions.**

\*\*\*\*\*

*Automated Commercial Environment (ACE)* has the same meaning as that term is defined in § 300.321 of this part.

\*\*\*\*\*

*CBP* means U.S. Customs and Border Protection, Department of Homeland Security.

\*\*\*\*\*

*International Fisheries Trade Permit (IFTP) or trade permit* means the permit issued by NMFS under § 300.322.

\*\*\*\*\*

*Permit holder*, for purposes of this subpart, means, unless otherwise specified, a person who is required to obtain an International Fisheries Trade Permit (IFTP) under §300.322.

\*\*\*\*\*

*Required data set* has the same meaning as § 300.321 (see definition of “Documentation and data sets required”).

\*\*\*\*\*

10. Section 300.182 is revised to read as follows:

**§ 300.182 International Fisheries Trade Permit.**



An importer, entering for consumption fish or fish products regulated under this subpart from any ocean area into the United States, or an exporter exporting or re-exporting such product, must possess a valid International Fisheries Trade Permit (IFTP) issued under §300.322.

11. In § 300.183, revise introductory paragraph (a), and paragraphs (a)(3), (b), (c), (d) and (e) to read as follows:

**§ 300.183 Permit holder reporting and recordkeeping requirements.**

(a) *Biweekly reports.* Any person trading fish and fish products regulated under this subpart and required to obtain a trade permit under §300.322 must submit to NMFS, on forms supplied by NMFS, a biweekly report of entries for consumption, exports and re-exports of fish and fish products regulated under this subpart except shark fins.

\* \* \* \* \*

(3) A biweekly report is not required for export consignments of bluefin tuna when the information required on the biweekly report has been previously supplied on a biweekly report submitted under § 635.5(b)(2)(i)(B) of this title. The person required to obtain a trade permit under § 300.322 must retain, at his/her principal place of business, a copy of the biweekly report which includes the required information and is submitted under § 635.5(b)(2)(i)(B) of this title, for a period of 2 years from the date on which each report was submitted to NMFS.

(b) *Recordkeeping.* Any person trading fish and fish products regulated under this subpart and required to submit biweekly reports under paragraph (a) of this section must retain, at his/her principal place of business, a copy of each biweekly report and all supporting records for a period of 2 years from the date on which each report was submitted to NMFS.

(c) Other requirements and recordkeeping requirements. Any person trading fish and fish products regulated under this subpart and required to obtain a trade permit under § 300.322 is also subject to the reporting and recordkeeping requirements identified in § 300.185.

(d) Inspection. Any person authorized to carry out the enforcement activities under the regulations in this subpart (authorized person) has the authority, without warrant or other process, to inspect, at any reasonable time: fish or fish products regulated under this subpart, biweekly reports, statistical documents, catch documents, re-export certificates, relevant sales receipts, import and export documentation, and any other records or reports made, retained, or submitted pursuant to this subpart. A permit holder must allow NMFS or an authorized person to inspect any fish or fish products regulated under this subpart, and inspect and copy any import export, and re-export documentation and any reports required under this subpart, and the records, in any form, on which the completed reports are based, wherever they exist. Any agent of a person trading and required to obtain a trade permit under §300.322, or anyone responsible for importing, exporting, re-exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.

(e) Applicability of reporting and recordkeeping requirements. Reporting and recordkeeping requirements in this subpart apply to any person engaging in trading regardless of whether a trade permit has been issued to that person.

12. In § 300.185:

- a. Revise paragraph (a)(2);
- b. Remove paragraphs (a)(3) and (b)(3); and
- c. Revise paragraphs (b)(2), (c)(2)(i) and (ii), and (c)(3) to read as follows:

**§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.**

(a) \*\*\*

(2) *Documentation and consignment document reporting requirements.* (i) All fish or fish products except for shark fins, regulated under this subpart, imported into the Customs territory of the United States or entered for consumption into a separate customs territory of a U.S. insular possession, must, at the time of presenting entry documentation for clearance by customs authorities (e.g., electronic filing via ACE or other documentation required by the port director) be accompanied by an original, complete, accurate, valid, approved and properly validated, species-specific consignment document. An image of such document and the required data set must be filed electronically with CBP via ACE.

(ii) *Bluefin tuna.* (A) Imports which were re-exported from another nation, must also be accompanied by an original, complete, accurate, valid, approved, and properly validated, species-specific re-export certificate. An image of such document, an image of the original import document, and the required data set must be filed electronically with CBP via ACE.

(B) Bluefin tuna, imported into the Customs territory of the United States or entered for consumption into the separate customs territory of a U.S. insular possession, from a country requiring a BCD tag on all such bluefin tuna available for sale, must be accompanied by the appropriate BCD tag issued by that country, and said BCD tag must remain on any bluefin tuna until it reaches its final destination. If the final import destination is the United States, which includes U.S. insular possessions, the BCD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or

re-export, the BCD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(iii) *Fish or fish products regulated under this subpart other than bluefin tuna and shark fins.* (A) Imports that were previously re-exported and were subdivided or consolidated with another consignment before re-export, must also be accompanied by an original, complete, accurate, valid, approved and properly validated species-specific re-export certificate. An image of such document, an image of the original import document, and the required data set must be filed electronically with CBP via ACE.

(B) All other imports that have been previously re-exported from another nation, should have the intermediate importers certification of the original statistical document completed.

(iv) Consignment documents must be validated as specified in §300.187 by a responsible government official of the flag country whose vessel caught the fish (regardless of where the fish are first landed). Re-export certificates must be validated by a responsible government official of the re-exporting country.

(v) A permit holder may not accept an import without the completed consignment document or re-export certificate as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(vi) For fish or fish products, except shark fins, regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment.

(b) \*\*\*

(2) *Documentation and reporting requirements.* A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit

holder by NMFS for each export referenced under paragraph (b)(1) of this section, and electronically file an image of such documentation and the required data set with CBP via ACE. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment document must be validated, as specified in § 300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment. A permit holder must ensure that the original, approved, consignment document accompanies the export of such products to their export destination.

(c) \*\*\*

(2) *Documentation and filing requirements.* (i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each such re-export consignment. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific re-export consignment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification. The permit holder must also attach the original consignment document that accompanied the import consignment or a copy of that document, and must note on the top of both the consignment documents and the re-export

certificates the entry number assigned by CBP authorities at the time of filing the entry summary. An electronic image of these documents and the required data set must be filed electronically with CBP via ACE at the time of export.

(ii) If a consignment of fish or fish products regulated under this subpart, except bluefin tuna or shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section is not subdivided into sub-consignments or consolidated, for each re-export consignment, a permit holder must complete the intermediate importer's certification on the original statistical document and note the entry number on the top of the statistical document. Such re-exports do not need a re-export certificate and the re-export does not require validation. An electronic image of the statistical document with the completed intermediate importer's certification and the required data set must be filed electronically with CBP via ACE at the time of re-export.

\* \* \* \* \*

(3) *Reporting requirements.* For each re-export, a permit holder must submit the original of the completed re-export certificate (if applicable) and the original or a copy of the original consignment document completed as specified under paragraph (c)(2) of this section, to accompany the consignment of such products to their re-export destination. For re-exports of untagged Atlantic bluefin tuna, the permit holder must email, fax, or mail a copy of the completed consignment document and re-export certificate to the ICCAT Secretariat and the importing nation, at addresses designated by NMFS, to be received by the ICCAT Secretariat and the importing nation, within five days of export.

\* \* \* \* \*

13. In § 300.189, revise paragraphs (a), (b), (c), (m) and (n) to read as follows:

## **§ 300.189 Prohibitions.**

\*\*\*\*\*

(a) Falsify information required on an application for a permit submitted under § 300.322.

(b) Import as an entry for consumption, purchase, receive for export, export, or re-export any fish or fish product regulated under this subpart without a valid trade permit issued under § 300.322.

(c) Fail to possess, and make available for inspection, a trade permit at the permit holder's place of business, or alter any such permit as specified in § 300.322.

\*\*\*\*\*

(m) Fail to electronically file via ACE a validated consignment document and the required data set for imports at time of entry into the Customs territory of the United States of fish or fish products regulated under this subpart except shark fins, regardless of whether the importer, exporter, or re-exporter holds a valid trade permit issued pursuant to § 300.322 or whether the fish products are imported as an entry for consumption.

(n) Import or accept an imported consignment of fish or fish products regulated under this subpart, except shark fins, without an original, complete, accurate, approved, valid and properly validated, species-specific consignment document and re-export certificate (if applicable) with the required information and exporter's certification completed.

14. Under part 300, add subpart R to read as follows:

### **Subpart R—International Trade Documentation and Tracking Programs.**

Sec.

300.320 Purpose and scope.

300.321 Definitions.

300.322 International Fisheries Trade Permit.

300.323 Reporting requirements.  
300.324 Prohibitions.

**§ 300.320 Purpose and scope.**

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), the Magnuson-Stevens Fishery Conservation and Management Act, the Tuna Conventions Act of 1950, and the Antarctic Marine Living Resources Convention Act of 1984. These regulations implement the applicable recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean, the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the eastern Pacific Ocean, and the Commission for the Conservation of Antarctic Marine Living Resources so far as they affect vessels and persons subject to the jurisdiction of the United States. These regulations are also issued under the Marine Mammal Protection Act of 1972, the Dolphin Protection Consumer Information Act and the Security and Accountability For Every Port Act of 2006. The requirements in this subpart may be incorporated by reference in other regulations under this title.

**§ 300.321 Definitions.**

*AMLR trade program* means the program for monitoring trade in Antarctic marine living resources including, inter alia, *Dissostichus* species as set forth in subpart G of this part.

*Automated Commercial Environment (ACE)* means, for purposes of this subpart, the Internet accessible system through which the trade community reports imports and exports and through which the government determines admissibility through use of both user generated and automated transactional functions. ACE is maintained by Customs and Border Protection (CBP), Department of Homeland Security (DHS), for the collection and dissemination of trade data.



*Catch and Statistical Document/Documentation* means a document or documentation accompanying regulated seafood imports, exports and re-exports that is submitted by importers and exporters to document compliance with TTVP, AMLR, and HMS ITP trade documentation programs as described in §216.24(f) of this title, and subparts G and M of this part.

*Documentation and data sets required under this subpart* refers to documentation and data that must be submitted by an importer or exporter at the time of, or in advance of, the import, export or re-export of fish or fish products as required under this subpart, the AMLR trade program, the HMS ITP, or the TTVP. ACE will specify the required data sets to be submitted for specific programs and transactions.

*Fish or fish products regulated under this subpart* means species and products containing species regulated under this subpart, the AMLR trade program, the HMS ITP, or the TTVP.

*HMS ITP* means the Highly Migratory Species International Trade Program which includes trade monitoring and/or reporting and consignment documentation for trade of bluefin tuna, southern bluefin tuna, frozen bigeye tuna, swordfish, and shark fins as described in subpart M of this part.

*Import* has the same meaning as 16 U.S.C. 1802(22). Import includes, but is not limited to, customs entry for consumption, withdrawal from warehouse for consumption, or entry for consumption from a foreign trade zone.

*International Fisheries Trade Permit (or IFTP)* means the permit issued by NMFS under § 300.222 .

*TTVP* means the Tuna Tracking and Verification Program, which regulates trade in certain fishery products as set forth in § 216.24(f)(2) of this title.

**§ 300.322 International Fisheries Trade Permit.**

(a) *General.* Any person, which includes a resident agent for a nonresident corporation (see 19 CFR 141.18), who imports into the United States (for consumption or non-consumption), exports, or re-exports fish or fish products regulated under this subpart from any ocean area, must possess a valid International Fisheries Trade Permit (IFTP) issued under this section. Fish or fish products regulated under this subpart may not be imported into, or exported or re-exported from, the United States unless the IFTP holder files electronically the documentation and the data sets required under this subpart with U.S. Customs and Border Protection (CBP) via ACE at the time of, or in advance of, importation, exportation or re-exportation. If authorized under other regulations under this title or other applicable laws and regulations, a representative or agent of the IFTP holder may make the electronic filings.

(b) *Application.* A person must apply for an IFTP electronically via a website designated by NMFS. The application must be submitted electronically with the required permit fee payment, at least 30 days before the date upon which the applicant wishes the permit to be made effective.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, NMFS will issue an IFTP within 30 days of receipt of a completed application. NMFS will notify the applicant of any deficiency in the application, including failure to provide information, documentation or reports required under this subpart. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* An IFTP issued under this section is valid for a period of one year from the permit effective date.

(e) *Alteration.* Any IFTP that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) *Transfer.* An IFTP issued under this section is not transferable or assignable; it is valid only for the permit holder to whom it is issued.

(h) *Inspection.* The permit holder must keep the IFTP issued under this section at his/her principal place of business. The IFTP must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must be submitted via a website designated by NMFS at the time of application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the permit holder must report the change to NMFS via a website designated by NMFS. If a change in permit information is not reported within 30 days, the permit is void as of the 30th day after such change.

(1) *Renewal*. Persons must apply annually for an IFTP issued under this section. A renewal application must be submitted via a website designated by NMFS, at least 15 days before the permit expiration date to avoid a lapse in permitted status. NMFS will renew a permit provided that: the application for the requested permit renewal is complete; all documentation and reports required under this subpart and: the Magnuson-Stevens Act, Atlantic Tuna Conventions Act, the Tuna Conventions Act, the Marine Mammal Protection Act, the Dolphin Consumer Protection Information Act, and the Antarctic Marine Living Resources Act have been submitted, including those required under §§ 216.24, 216.93, 300.114, 300.183, 300.185, 300.186, 300.187 and 635.5 of this title; and the applicant is not subject to a permit sanction or denial under paragraph (i) of this section.

**§300.323 Reporting requirements.**

A person importing for consumption or non-consumption, exporting, or re-exporting fish or fish products regulated under this subpart from any ocean area must file all reports and documentation required under the AMLR trade program, HMS ITP, and TTVP, and under other regulations that incorporate by reference the requirements of this subpart.

**§ 300.324 Prohibitions.**

In addition to the prohibitions specified in §§ 300.4, 300.117, 300.189, 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to:

- (a) violate any provision of this subpart, or any IFTP issued under this subpart,
- (b) Import fish or fish products regulated under this subpart without a valid IFTP or without submitting complete and accurate information.

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